

Willie James Washington  
8116497  
George F. Bailey Detention Facility  
446 Alta Road  
Suite 5300  
San Diego, CA 92158

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08CV0701-DMS(WMC)

## Other Orders/Judgments

3:08-cv-00701-DMS-WMC Washington v. San Diego County Sheriff's Department et al

**U.S. District Court**

**Southern District of California**

### Notice of Electronic Filing

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**Case Name:** Washington v. San Diego County Sheriff's Department et al

**Case Number:** 3:08-cv-701

**Filer:**

**WARNING: CASE CLOSED on 04/22/2008**

**Document Number:** 3

#### Docket Text:

**ORDER Denying Motion to Proceed in Forma Pauperis and Dismissing Case without prejudice pursuant to 28 U.S.C. 1915(a) re [2]. Plaintiff if Granted forty five (45) days from the date this Order is Filed to either: (1) pay the entire \$350 filing fee, or (2) file a new Motion to Proceed IFP, which includes a certified copy of his trust account statement for the 6-month period preceding the filing of his Complaint. Signed by Judge Dana M. Sabraw on 4/22/08. (IFP form sent to Plaintiff)(lao)**

**3:08-cv-701 Notice has been electronically mailed to:**

**3:08-cv-701 Notice has been delivered by other means to:**

Willie James Washington  
8116497  
George F. Bailey Detention Facility  
446 Alta Road  
Suite 5300  
San Diego, CA 92158

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1106146653 [Date=4/23/2008] [FileNumber=2554059-0]  
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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 WILLIE JAMES WASHINGTON,  
12 Booking # 8116497,

13 Plaintiff,

14 vs.

15  
16 SAN DIEGO COUNTY SHERIFF'S  
17 DEP'T; BANKS, Lt. Sheriff's Deputy;  
CAP'T PEÑA, Sheriff's Deputy,

18 Defendants.  
19

Civil No. 08-0701 DMS (WMc)

**ORDER DENYING MOTION TO  
PROCEED *IN FORMA PAUPERIS*  
AND DISMISSING CASE  
WITHOUT PREJUDICE  
PURSUANT TO  
28 U.S.C. § 1915(a)**

**[Doc. No. 2]**

20 Willie James Washington, ("Plaintiff"), currently in custody of the San Diego Sheriff's  
21 Department George F. Bailey Detention Facility located in San Diego, California, and  
22 proceeding pro se, has submitted a civil rights Complaint pursuant to 28 U.S.C. § 1983. Plaintiff  
23 has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a  
24 Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

25 **I.**

26 **MOTION TO PROCEED IFP**

27 All parties instituting any civil action, suit or proceeding in a district court of the United  
28 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. See 28

1 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is  
2 granted leave to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a). *See*  
3 *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176,  
4 1177 (9th Cir. 1999). Prisoners granted leave to proceed IFP however, remain obligated to pay  
5 the entire fee in installments, regardless of whether the action is ultimately dismissed for any  
6 reason. *See* 28 U.S.C. § 1915(b)(1) & (2).

7 Prisoners seeking leave to proceed IFP must also submit a "certified copy of the trust fund  
8 account statement (or institutional equivalent) for the prisoner for the 6-month period  
9 immediately preceding the filing of the complaint...." 28 U.S.C. § 1915(a)(2). From the  
10 certified trust account statement, the Court must assess an initial payment of 20% of (a) the  
11 average monthly deposits in the account for the past six months, or (b) the average monthly  
12 balance in the account for the past six months, whichever is greater, unless the prisoner has no  
13 assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see also Taylor v. Delatoore*, 281 F.3d 844, 850 (9th  
14 Cir. 2002). Thereafter, the institution having custody of the prisoner must collect subsequent  
15 payments, assessed at 20% of the preceding month's income, in any month in which the  
16 prisoner's account exceeds \$10, and forward those payments to the Court until the entire filing  
17 fee is paid. *See* 28 U.S.C. § 1915(b)(2).

18 While Plaintiff has filed a Motion to Proceed IFP in this matter pursuant to 28 U.S.C.  
19 § 1915(a), he has not attached a certified copy of his prison trust account statement for the 6-  
20 month period immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2);  
21 S.D. CAL. CIVLR 3.2. Section 1915(a)(2) clearly mandates that prisoners "seeking to bring a  
22 civil action ...without prepayment of fees ... shall submit a certified copy of the trust fund  
23 account statement (or institutional equivalent) ... for the 6-month period immediately preceding  
24 the filing of the complaint." 28 U.S.C. § 1915(a)(2) (emphasis added).

25 Without Plaintiff's trust account statement, the Court is simply unable to assess the  
26 appropriate amount of the filing fee required to initiate this action. *See* 28 U.S.C. § 1915(b)(1).  
27 Therefore, Plaintiff's Motion to Proceed IFP must be DENIED.

28 ///

II.

CONCLUSION AND ORDER

For the reasons set forth above, **IT IS ORDERED** that:

(1) Plaintiff's Motion to Proceed IFP [Doc. No. 2] is **DENIED**.

(2) This action is **DISMISSED** without prejudice for failure to prepay the \$350 filing fee mandated by 28 U.S.C. § 1914(a), and for failure to successfully move to proceed IFP pursuant to 28 U.S.C. § 1915(a).

(3) Plaintiff if **GRANTED** forty five (45) days from the date this Order is Filed to either: (1) pay the entire \$350 filing fee, **or** (2) file a new Motion to Proceed IFP, *which includes a certified copy of his trust account statement for the 6-month period preceding the filing of his Complaint* pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).

**IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with a Court-approved form "Motion and Declaration in Support of Motion to Proceed IFP" in this matter. If Plaintiff neither pays the \$350 filing fee in full nor sufficiently completes and files the attached Motion to Proceed IFP, together with a certified copy of his prison trust account statement within 45 days, this action shall remained closed without further Order of the Court.

DATED: April 22, 2008

  
HON. DANA M. SABRAW  
United States District Judge

PLAINTIFF/PETITIONER/MOVANT'S NAME

PRISON NUMBER

PLACE OF CONFINEMENT

ADDRESS

**United States District Court  
Southern District Of California**

\_\_\_\_\_  
Plaintiff/Petitioner/Movant

v.

\_\_\_\_\_  
Defendant/Respondent

Civil No. \_\_\_\_\_

(TO BE FILLED IN BY U.S. DISTRICT COURT CLERK)

**MOTION AND DECLARATION UNDER  
PENALTY OF PERJURY IN SUPPORT  
OF MOTION TO PROCEED IN FORMA  
PAUPERIS**

I, \_\_\_\_\_  
declare that I am the Plaintiff/Petitioner/Movant in this case. In support of my request to proceed without prepayment of fees or security under 28 U.S.C. § 1915, I further declare I am unable to pay the fees of this proceeding or give security because of my poverty, and that I believe I am entitled to redress.

**In further support of this application, I answer the following question under penalty of perjury:**

1. Are you currently incarcerated? ☐ Yes ☐ No (If "No" go to question 2)

If "Yes," state the place of your incarceration \_\_\_\_\_

Are you employed at the institution? ☐ Yes ☐ No

Do you receive any payment from the institution? ☐ Yes ☐ No

[Have the institution fill out the Certificate portion of this affidavit and attach a certified copy of the trust account statement from the institution of your incarceration showing at least the last six months transactions.]

2. Are you currently employed? ☐ Yes ☐ No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

b. If the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. In the past twelve months have you received any money from any of the following sources?:

- |   |  |
|---|--|
| a. Business, profession or other self-employment  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| b. Rent payments, royalties interest or dividends | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| c. Pensions, annuities or life insurance          | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| d. Disability or workers compensation             | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| e. Social Security, disability or other welfare   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| e. Gifts or inheritances                          | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| f. Spousal or child support                       | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| g. Any other sources                              | <input type="checkbox"/> Yes <input type="checkbox"/> No |

If the answer to any of the above is "Yes" describe each source and state the amount received and what you expect you will continue to receive each month. \_\_\_\_\_

\_\_\_\_\_

4. Do you have any checking account(s)? ☐ Yes ☐ No

a. Name(s) and address(es) of bank(s): \_\_\_\_\_

b. Present balance in account(s): \_\_\_\_\_

5. Do you have any savings/IRA/money market/CDS' separate from checking accounts? ☐ Yes ☐ No

a. Name(s) and address(es) of bank(s): \_\_\_\_\_

b. Present balance in account(s): \_\_\_\_\_

6. Do you own an automobile or other motor vehicle? ☐ Yes ☐ No

a. Make: \_\_\_\_\_ Year: \_\_\_\_\_ Model: \_\_\_\_\_

b. Is it financed? ☐ Yes ☐ No

c. If so, what is the amount owed? \_\_\_\_\_

7. Do you own any real estate, stocks, bonds, securities, other financial instruments, or other valuable property?

☐ Yes ☐ No

If "Yes" describe the property and state its value. \_\_\_\_\_

8. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support. \_\_\_\_\_

9. List any other debts (current obligations, indicating amounts owed and to whom they are payable): \_\_\_\_\_

10. List any other assets or items of value (specify real estate, gifts, trusts inheritances, government bonds, stocks, savings certificates, notes, jewelry, artwork, or any other assets [include any items of value held in someone else's name]): \_\_\_\_\_

12. If you answered all of the items in #3 "No," and have not indicated any other assets or sources of income anywhere on this form, you must explain the sources of funds for your day-to-day expenses. \_\_\_\_\_

**I declare under penalty of perjury that the above information is true and correct and understand that a false statement herein may result in the dismissal of my claims.**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF APPLICANT



If you are a **prisoner** you must have an officer from your institution provide this official certificate as to the amount of money in your prison account. There are no exceptions to this requirement.

**PRISON CERTIFICATE**  
**(Incarcerated applicants only)**  
 (To be completed by the institution of incarceration)

I certify that the applicant \_\_\_\_\_  
 (NAME OF INMATE)

\_\_\_\_\_  
 (INMATE'S CDC NUMBER)

has the sum of \$ \_\_\_\_\_ on account to his/her credit at \_\_\_\_\_

\_\_\_\_\_  
 (NAME OF INSTITUTION)

I further certify that the applicant has the following securities \_\_\_\_\_

to his/her credit according to the records of the aforementioned institution. I further certify that **during**

**the past six months** the applicant's *average monthly balance* was \$ \_\_\_\_\_

and the *average monthly deposits* to the applicant's account was \$ \_\_\_\_\_

**ALL PRISONERS *MUST* ATTACH A CERTIFIED COPY OF THEIR TRUST ACCOUNT  
 STATEMENT SHOWING TRANSACTIONS FOR THE SIX-MONTH PERIOD  
 IMMEDIATELY PRECEDING THE FILING OF THE COMPLAINT PER 28 U.S.C. § 1915(a)(2).**

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 SIGNATURE OF AUTHORIZED OFFICER OF INSTITUTION

\_\_\_\_\_  
 OFFICER'S FULL NAME (PRINTED)

\_\_\_\_\_  
 OFFICER'S TITLE/RANK

**TRUST ACCOUNT WITHDRAWAL AUTHORIZATION**  
**(Incarcerated applicants only)**

(This form **MUST** be completed by the prisoner requesting to proceed in forma pauperis. An incomplete "Trust Account Withdrawal Authorization Form," or "Prison Certificate" will result in automatic denial of the prisoner's request to proceed in forma pauperis.)

I, \_\_\_\_\_, request and authorize the agency holding me in  
(Name of Prisoner/ CDC No.)  
 custody to prepare for the Clerk of the United States District Court for the Southern District of California, a certified copy of the statement for the past six months of my trust fund account (or institutional equivalent) activity at the institution where I am incarcerated.

I further request and authorize the agency holding me in custody to calculate and disburse funds from my trust fund account (or institutional equivalent) pursuant to any future orders issued by the Court relating to this civil action pursuant to the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Title VIII, §§ 801-10, 110 Stat. 1321 (1996).

This authorization is furnished in connection with a civil action filed in the Southern District of California, and I understand that, pursuant to 28 U.S.C. §§ 1914 and 1915(b)(1), the total amount of filing fees for which I am obligated is either ☐ \$350 (civil complaint) or ☐ \$5 (habeas corpus petition) (check one). I also understand that this fee will be debited from my account regardless of the outcome of this action. This authorization shall apply to any other agency into whose custody I may be transferred.

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 SIGNATURE OF PRISONER

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